

April 7, 2010

VIA ELECTRONIC FILING

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: CC Docket No. 96-45 Federal-State Joint Board on Universal Service
TracFone Wireless, Inc. - Petition for Designation as an Eligible
Telecommunications Carrier in the State of Alabama

NOTICE OF EX PARTE PRESENTATION

Dear Ms. Dortch:

On March 18, 2010, the Alabama Commercial Mobile Radio Services Emergency Telephone Services Board (AL 911 Board) submitted a notice of ex parte presentation which indicates that several members of the AL 911 Board and their counsel met separately with Louis Peraetz, Acting Legal Advisor to Commissioner Mignon Y. Clyborn, and with Charles Bradford Mathias, Legal Advisor to Commissioner Meredith Attwell Baker. As indicated in that ex parte letter and the attached presentation materials, the AL 911 Board once again has alleged that TracFone Wireless, Inc. ("TracFone") is not in compliance with Alabama law governing 911 service, including funding for 911 service. The AL 911 Board also renewed its prior request that the Commission "reject" TracFone's certification of compliance with Alabama 911 law, pursuant to the condition imposed by the Commission in its April 2008 order designating TracFone as an Eligible Telecommunications Carrier in eleven jurisdictions, including Alabama. The AL 911 Board also reiterated its companion request that the Commission "revoke" TracFone's ETC designation.

Nothing in the aforementioned ex parte letter or attachment provides any factual or legal information beyond that asserted by the AL 911 Board in its June 2, 2009 petition. TracFone already has submitted comments and reply comments on that petition wherein it refuted the AL 911 Board's unsupported assertion that TracFone has violated any Alabama law regarding 911/E911 service or funding. Although TracFone has no desire to burden the Commission with further submissions which repeat the information provided in its initial and reply comments, it does deem it necessary to bring to the Commission's attention the following points in response to the AL Board's March 18, 2010 ex parte letter.

First, no court, no administrative agency nor any tribunal of competent jurisdiction in the State of Alabama has made any determination with respect to TracFone's compliance with state law. It has been demonstrated repeatedly in Alabama and elsewhere that 911 funding mechanisms based on collection of billed surcharges from users of wireless telecommunications services are not workable for prepaid services. Many states already have recognized that 911 funding mechanisms based on billed surcharges are not workable for non-billed services and have enacted legislative solutions which result in collection of 911 fees from all consumers of wireless services. To date, not fewer than seven states have enacted laws which require collection of those fees from consumers of prepaid wireless services at the point of retail sale. Similar legislation is pending in at least eleven other states.


Second, the extraordinary relief sought by the AL 911 Board would do nothing to enhance funding of 911/E911 services in Alabama, nor would it lead to workable collection mechanisms for the prepaid segment of the wireless industry. What that requested relief would do is deprive many thousands of low-income Alabama households of an important federal telecommunications benefit. In the short period since TracFone's designation as an ETC in Alabama in April 2008, TracFone has enrolled more than 156,000 low-income Alabama households in its SafeLink Wireless® Lifeline program. This is a remarkable accomplishment. According to Commission data, prior to TracFone's introduction of SafeLink Wireless® in Alabama, only about 8.5 percent of Lifeline-eligible low income Alabama households were enrolled in all the other Alabama ETCs' Lifeline programs. The total number of Lifeline-enrolled households was only 25,402. (Source: *Lifeline and Link-Up (Report and Order and Further Notice of Proposed Rulemaking)*, 19 FCC Rcd 8302 (2004), at Appendix K - Section 1: Baseline Information Table 1.A. Baseline Lifeline Subscription Information (Year 2002)). Alabama's neediest households deserve the availability of Lifeline service and deserve the opportunity to obtain Lifeline-supported service from a company which is committed to reaching out to as many qualified households as possible to deliver an affordable wireless service.

Third, as TracFone noted in its reply comments in this matter, the Commission imposed the requirement that TracFone self-certify that it is in compliance with state law governing 911 in response to an unproven statement made by an official of the National Emergency Numbers Association - Keystone Chapter -- a statement which was later admitted under oath by the person making the statement to have been false when made. Upon learning of that false statement, TracFone filed with the Commission on July 16, 2009 a Petition to Rescind the State 911/E911 Certification Condition. Indeed, Keystone NENA, in recognition that the condition was imposed based upon incorrect factual allegations provided by it, filed comments supporting TracFone's petition to rescind. Although that petition is unopposed and the falsity of the statement which led to imposition of the self-certification of state law compliance condition is unquestioned, that petition has remained pending for nearly nine months.

Finally, TracFone notes that Alabama Code Section 11-98-7 sets forth the powers and duties of the AL 911 Board. Those powers and duties include such items as to maintain a 911 fund and to make disbursements from the fund for support 911 service. Nothing in those enumerated powers and duties either explicitly or implicitly authorizes the AL 911 Board to petition the Commission to revoke ETC designations and thereby deprive low-income Alabama households access to a federally-supported wireless Lifeline service. The fact that the AL Board

is using resources obtained from 911 fees paid by Alabama customers, including many low-income customers, makes the AL Board's conduct especially inappropriate.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Brecher', with a long horizontal flourish extending to the right.

Mitchell F. Brecher

Counsel for TracFone Wireless, Inc.

Cc: Mr. Louis Peraertz
Mr. Charles Bradford Mathias
Ms. Jennifer McKee
Ms. Romanda Williams
Mr. Wendell Cauley